



# United States Department of the Interior

## NATIONAL PARK SERVICE

1849 C Street, N.W.  
Washington, D.C. 20240

IN REPLY REFER TO:

DEC 15 2006

Property: 101-105 First (Henry) Street, Roanoke, Virginia/ Project Number: 18110  
Property: 31 Centre Avenue, NW, Roanoke, Virginia / Project Number: 18113  
Taxpayer's Identification Number:

Dear

My review of your appeal of the decision of Technical Preservation Services, National Park Service, denying certification of the rehabilitation of the properties cited above is concluded. The review was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I want to thank your representatives, , and for meeting with me in Washington on October 4, 2006, and for the information that they provided during the meeting.

After careful review of the complete record for this project, including the Memorandum dated September 14, 2006, revised construction documents dated September 13, 2006, and the Supplemental Materials for Appeal submitted at the appeal meeting, I have determined that the rehabilitation of the buildings at 101-105 First (Henry) Street and 31 Centre Avenue, NW, in Roanoke is not consistent with the historic character of the properties and the historic districts in which they are located, and that the project does not meet Standards 2, 5, 6, and 9 of the Secretary of the Interior's Standards for Rehabilitation. Therefore, the denial issued on August 3, 2006, by Technical Preservation Services (TPS), is hereby affirmed.

The building at 101-105 First (Henry) Street was constructed as retail space in 1951, while 31 Centre Avenue was constructed a year later as a medical office. Both buildings are single story and otherwise modest in their design and construction. They feature concrete block structural walls, which on most elevations are faced with brick, and have flat roofs behind raised brick parapets topped by poured concrete caps. At the time of the rehabilitation the interiors featured wood frame and concrete block partitions, exposed concrete block perimeter walls, and limited finishes that survived in very poor condition. The buildings were part of a once thriving African-American shopping and entertainment district. They were certified as contributing to the Henry Street and Gainsboro Historic Districts on April 6, 2006. However, because of the severely deteriorated condition of both buildings, TPS approval of the Part 1 applications was accompanied by a caution in each case that "a substantial loss of historic fabric could negatively affect the integrity of the building and, therefore, its 'certified historic structure' status."

The rehabilitation project proposes to reuse the 101-105 First Street and 31 Centre Avenue structures in conjunction with the neighboring theater to house a culinary institute and includes new construction at 107 First Street which connects the theater and 101-105 First Street. In its review of the rehabilitation project, TPS found that extensive portions of 101-105 First Street and 31 Centre Avenue were not retained but

were instead demolished or disassembled. Consequently, TPS determined that the rehabilitation failed to meet the Standards for Rehabilitation.

I concur with this assessment. The rehabilitation project began with structures that, while poorly constructed and severely deteriorated, still featured exterior structural bearing walls, partial roofs and roof structures, intact floor slabs, interior structural bearing walls and partitions, and (in the 31 Centre Street building, at least) some amount of interior trim and wall finish. Photographs and plans in the project files document the overwhelming amount of historic material that was removed after the Part 1 applications were approved. All roofs and roof structure were removed and approximately one-half of the historic floor slab in the center of 101-105 First Street was changed thus affecting the volume of that space. Also, from the photographs in the record, it appears that on 101-105 First Street, almost all of the north wall, and all of the east facing walls excepting one section were dismantled or demolished. The building's south wall has been dismantled down to the height of the door lintel, while the remaining areas of this wall and the wall along the west elevation consist only of brick and concrete masonry unit piers and bulkheads that once framed the display windows and door openings. All interior partitions and any surviving trim were also removed. Because these buildings had little in the way of distinctive massing, ornament, interior details, or other features, their basic structure and the simple materials were all the more central to their historic character. The removal of historic features and materials has irreversibly compromised the historic character of these buildings. For this reason I find that the work already undertaken causes this project not to meet Standard 2, which states: "The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided," and Standard 5, which states: "Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved."

In your appeal, you point to provisions of the National Park Service's rehabilitation standards and guidelines that allow for the replacement of portions of historic features that are beyond repair. Although some portions of historic features may be replaced in accordance with the Standards, there is a point at which so much of the structure is removed that a building's physical integrity and thus its historic character can be said to be irretrievably lost. After a searching examination and review of the project file, and the presentation made by your representatives at the October 4 meeting, I find this to be the case at 101-105 First (Henry) Street and 31 Centre Avenue. Dismantling the overwhelming majority of these structures, including much of the masonry structural walls, brick veneer walls, roofs, floors, and other features goes well beyond the limits of replacement work envisioned by the Standards. And, reassembling such significant portions of the buildings' exterior walls, even with salvaged materials, is tantamount to a reconstruction, rather than a rehabilitation of the building. A reconstructed building is not historic as it lacks integrity, and as such, a reconstruction of a building is not an appropriate treatment. For these reasons, I also find that the project does not meet Standard 6, which states: "Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities, and where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence." (As will be discussed below, "replacement of a distinctive feature" does not extend to the virtual replacement of an entire building.) I note, also, that the loss of historic materials, features, and finishes is so extensive as to suggest that these buildings may no longer qualify as certified historic structures.

Department of the Interior regulations governing the tax incentives program state that "The Chief Appeals Officer may base his decision in whole or in part on matters or factors not discussed in the decision

appealed from.” [36 CFR Part 67.10(c)(4)]. My review of this matter, therefore, encompasses the entire proposed rehabilitation project for the reuse of these two “certified historic structures.” After a careful examination of the entire proposed project, I find that the project fails to meet the Secretary of the Interior’s Standards for Rehabilitation in several additional respects.

First, the proposed related new construction at 107 First Street extends over the footprint of the historic building at 101-105 First Street. The new construction rises above the historic roofline of 101-105 First Street, and, though set back from the main facade, would have the appearance of a rooftop addition. Further changes to the historic flat roof include the proposed construction of a new roof monitor with a shed roof. Such highly visible additions are inappropriate for single-story structures and cause the project not to meet Standard 9, which states: “New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize a property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.”

Second, the project appears to call for replacing surviving historic windows and exterior doors in each building. In cases where such features are deteriorated beyond repair, their replacement with new units of similar appearance and construction is acceptable. However, the files for the Henry Street Projects do not include documentation, such as a window survey or close up photographs, which show the level of deterioration on each unit and confirm that replacement is warranted. With little information about the condition of these features, I find that the proposed replacement of the surviving historic windows and exterior doors does not meet Standard 2, which states in part: “The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided,” and Standard 6, which states in part: “Deteriorated historic features shall be repaired rather than replaced.”

Third, historically the building at 101-105 First Street was divided into discrete, narrow spaces extending from the storefronts to the rear of the building. Indeed, with their simple construction and modest interior finishes, the plan constituted much of what could be considered the historic character of the interiors of these buildings. The proposed project fails to maintain this orientation, interrupting the front to back configuration with a perpendicular circulation pattern made up of stairs and hallways constructed of entirely new materials. The original interior division of the building as separate retail spaces is discernible only in portions of the front of the structure. Altering the historic floor levels also renders the two central storefront doors unusable, fixed in a closed position above the new floor level. Such a change further distances the new interior from its historic orientation and negates the relationship of the storefronts to the streetscape outside. The new interior plan, combined with the loss of virtually all of the historic interior materials that existed in the building prior to the rehabilitation will leave future occupants unaware they are inside a historic space. The entirety of the interior will be new construction. For these reasons, the proposed project also fails to meet Standard 2, which states: “The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.”

As discussed above, I have examined the in-progress rehabilitations of these “certified historic structures” and found that they do not meet the statutory test for certification, namely, that the rehabilitations must be “consistent with the historic character” of the properties. In doing so, I have applied the Secretary of the Interior’s Standards for Rehabilitation, which “are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation.” [36 CFR Part 67.7(a)].

The “Memorandum” and the “Supplemental Materials for Appeal” that you submitted present your positions on issues raised by the previous decision by TPS. Your positions in general and for the most part have been addressed in the discussion above. However, in order to assure you of the full consideration of your views, I respond more fully as follows.

The Memorandum notes that Part 1 of the Historic Preservation Certification Application submitted for the property states that “[a]lthough the building has very little architectural significance, it is a rare surviving example of the many small-scale businesses that made Henry Street the vibrant commercial center of the African-American community of Gainesboro in the first three quarters of the 20th century.” The Memorandum then states: “The real significance of the Project buildings is not their unique architectural features, but rather their very existence, their physical place in the streetscape that reflects the cultural history of the district in which they are located.” [pages 10-11]. The implication of this statement is that these properties contributed to the historic district for their significance in the cultural history of the community rather than for architectural significance and thus that retaining the historic integrity of the buildings should be of no relevance in the National Park Service review of the rehabilitation.

This is not the case. A purpose of listing historic districts and the properties that comprise them in the National Register of Historic Places is to assist in preserving historic buildings in their historic condition so that the American public can understand and appreciate their heritage. The fact that buildings associated with the cultural history of a community are not of particular architectural distinction or significance does not mean that their physical embodiment (that is, their “architecture” in the literal sense) is not important to understanding that history.

To argue otherwise would be to suggest that so long as a property looks old, that it is, in fact, historic. However, the purpose of the historic rehabilitation tax credit program is to preserve historic buildings, not to create, through substantial reconstruction or otherwise, new buildings that resemble what was there before. And that is precisely what has happened here. Upon completion of these projects, the structures will be, in essence, new buildings despite the reuse of some salvaged materials. In losing virtually all of their historic materials, the buildings lose their historic character.

I do not agree with the implied point that a historic building may exist independently of the physical materials that make it up—independently, that is, of its “fabric,” in the language of the TPS decision letter. (The Memorandum faults the use of the word “fabric” by TPS, noting that the word “is not defined in any of the NPS material nor used in any of the ten Standards.” [page 11]. However, I find that the word “fabric” is in common use and is clearly synonymous with “materials,” which does appear in Standard 2, and is cited by TPS.) It is for this reason that the Secretary’s Standards address the materials, and their impact on the integrity of a historic structure.

The Memorandum notes that the program regulations, the Standards for Rehabilitation, and the Guidelines for Rehabilitating Historic Buildings permit the dismantling and rebuilding of portions of historic buildings. However, these documents focus on discrete portions of buildings. None of these documents supports the significant level of demolition/dismantling undertaken here, or supports the contention that the rehabilitation project as described in the Part 2 application is consistent with the historic character of the buildings involved.

The section of the program regulations setting forth the Standards for Rehabilitation states, “In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to

stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme intervention as part of a certified rehabilitation if: (1) The necessity for dismantling is justified in supporting documentation; (2) Significant architectural features and overall design are retained; and (3) Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.” [36 CFR Part 67.7(d)]. However, the substantial amount of demolition and rebuilding involved in these projects far exceeds the level anticipated in this passage, which applies to “portions” of a building. As a consequence, and as discussed above, the projects in question do not meet the second and third conditions.

Nor do the Guidelines for Rehabilitating Historic Buildings (“Guidelines”) support the case for certification here. (I will refer to the Guidelines printed out and appearing at Tab 9 of the Memorandum.) First, the Introduction to the Guidelines states that they “are intended to assist in applying the Standards to projects generally; consequently, they are not meant to give case-specific advice....” [Tab 9, page 1]. They cannot by themselves justify any treatment or otherwise compel certification of a specific rehabilitation project.

The Memorandum cites specific passages of the Guidelines, including the advice that the Guidelines provide “for *replacing* an entire character-defining feature with new material because the level of deterioration or damage of materials precludes repair.” [Tab 9, page 3]. However, as the continuation of this passage in parenthesis makes clear, it is meant to apply only to particular *elements* of a building: “(for example, an exterior cornice, an interior staircase; or a complete porch or storefront).” Nothing in this passage suggests that an entire building itself is merely a “feature” of the building, nor does this passage justify the virtual replacement of an entire building, as is the case with the project under consideration.

The same limitation applies to the other passages cited from the Guidelines as offering examples of “recommended” treatments: “Examples [of permissible replacement] can include large sections of a wall, a cornice, balustrade, column or stairway” [Tab 9(A), page 6]; and “Replacing in kind—or with substitute material—those portions or features of a structural system that are either extensively deteriorated or are missing when there are surviving prototypes such as cast iron columns, roof rafters or trusses or sections of loadbearing walls.” [Tab 9(B), page 3]. Again, these passages refer merely to replacement of “sections” and “portions” of a building. They do not apply to the substantial replacement occurring in this case, which is tantamount to replacing the whole building, rather than a discrete portion of the building.

Other sections of the Guidelines—not cited in the Memorandum—suggest that the work undertaken here is not in keeping with the historic character of these buildings, and would not be permissible. In the section on Building Exterior—Masonry, a “not recommended” treatment is “Replacing or rebuilding a major portion of exterior masonry walls that could be repaired so that, as a result, the building is no longer historic and is essentially new construction.” [Tab 9(A) page 2]. The key to this passage is that the replacement or rebuilding of a major portion of the building is tantamount to new construction. Equally relevant is the passage from Building Interior—Structural Systems citing as “not recommended” the act of “Demolishing a loadbearing masonry wall that could be augmented and retained, and replacing it with a new wall (i.e., brick or stone), using the historic masonry only as an exterior veneer.” [Tab 9(B), page 2]. This is the precise treatment that the project calls for—that is reusing the dismantled historic bricks as a veneer on an essentially new steel frame building. These passages support the conclusion that the work already accomplished on these historic buildings is not in keeping with their historic character. Again, I note that the loss of historic materials is so extensive as to suggest that these buildings may no longer qualify as certified historic structures.

At our appeal meeting a "Tech Note" published by TPS was presented as evidence that extensive portions of historic structures can be replaced. I have examined "Preservation Tech Note—Masonry Number 1: Substitute Materials: Replacing Deteriorated Serpentine Stone with Pre-Cast Concrete." It discusses another tax incentives project approved by NPS some years ago on a certified historic structure located at Six Logan Circle in Washington, D.C. Department of the Interior regulations note that "Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to other projects." [36 CFR Part 67.6]. However, I have examined this case and note that it differs substantially from the project under consideration here. The case discussed the replacement of only the severely deteriorated stone veneer on a building facade, leaving the structural wall behind the veneer and the historic windows and interior finishes intact—not the demolition/dismantling and replacement of virtually the entire structure, including the windows, doors and interior finishes, as is the case with these two historic buildings.

Finally, the Memorandum and Supplemental Materials suggest that TPS inappropriately relied on the "wall test" described in the Internal Revenue Code and legislative history in reaching its decision regarding certification. As discussed above, my decision is based upon my professional analysis of the Secretary of the Interior's Standards for Rehabilitation as applied to the project presented, not upon the "wall test." Nevertheless, I have reviewed the materials presented, which cite to an e-mail message from TPS review staff and a TPS briefing document. The crucial passage cited in both is the following statement from a Congressional Committee:

...because the Committee believes that the Secretary of the Interior's Standards for Rehabilitation ensure that certified historic structures are properly rehabilitated, the external wall requirement for such buildings was deleted by the bill in order to provide the Secretary of the Interior with appropriate flexibility. The Committee intends, however, that rehabilitations eligible for the 20% credit should continue to be true rehabilitations and not substantially new construction. The Committee expects, therefore, that the Secretary of the Interior will continue generally to deny certification to rehabilitations during which less than 75% of the external walls are not retained in place. [COMREP ¶ 461.01 Rehabilitation expenditures, energy credits, etc., 9'86 TRA, PL 99-514, 10/22/86; found in Supplement Materials, page 1 of 9].

TPS appears to have used this passage not as a statutory or regulatory test for certification but as a rule of thumb, illustrating that a substantial and material difference exists between a building that has been properly rehabilitated (even if some historic materials have been removed) and a building that has been completely gutted with the result that the "rehabilitated" structure is in fact a new building lacking historic integrity. Furthermore, the TPS decision letter itself demonstrates that TPS based its decision on the explicit wording of the Secretary of the Interior's Standards for Rehabilitation, not upon the "wall test."

After my searching examination of this entire matter, as discussed more fully above, I find that the rehabilitation of these buildings is not consistent with the historic character of the buildings and, therefore, does not meet the sole statutory test for certification.

As Department of the Interior regulations state, my decision is the final administrative decision regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

John A. Burns, FAIA  
Chief Appeals Officer, Cultural Resources

cc:

SHPO- VA  
IRS